

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

-
WRIT PETITION No.11104 of 1999

-
Dated : 13.06.2007

-
Between:

-
G.R.Cables Limited, a; company registered under the Companies Act with its registered office at 36,Santhoshnagar, Mehdiapatnam, Hyderabad, rep., by its Managing Director G.R.Reddy.

... PETITIONER

And:

-
Department of Telecommunications,
Sanchar Bhavan, 20, Ashoka Road,
New Delhi, represented by its Director General and others.

....RESPONDENTS

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

-
WRIT PETITION No.11104 of 1999

ORDER:

This writ petition is filed seeking a declaration that the circular letter No.203-9/96-MMs, dated 30.09.1997, of the first respondent and letter Nos.CP/82-63/96-97/1/34 dated 20.07.1998 and CP/82-63/97-98/42, dated 12.03.1999 of the third respondent are arbitrary and illegal and for a consequent direction to the third respondent to refund a sum of Rs.5,22,538/- retained by him on account of the alleged reduction in customs duty.

Petitioner is a public limited company, which manufactures underground cables of different types and sizes used by the Department of Telecommunications (DoT), and it is a regular supplier

of cables to the department. While so, the DoT floated a tender notification on 30.11.1994, for procurement of 352 LCKM underground cables of various types. Pursuant to the said tender, the DoT had issued letter of intent for supply of cable to the petitioner on 03.06.1996 for an aggregate quantity of 1.60 LCKM. Out of the same, 1.03 LCKM was allocated to Kerala Telecom Circle. Accordingly, the Kerala Telecom Circle placed a purchase order dated 08.08.1996, duly annexing the prices for the cable to be supplied. Pursuant to the said purchase order, petitioner supplied cable to the consignee and price, except an amount of Rs.5,22,538/-, was also paid to the petitioner.

Be that as it may, the first respondent addressed a letter dated 30.09.1997 to the third respondent to regularize the bills of the petitioner and reduce the price, on account of reduction in customs duty announced in the Union Budget for the year 1996-97. Consequent thereto, the third respondent, by letter dated 20.07.1998, informed the petitioner that an amount of Rs.25,50,183/- was paid in excess to it, and after deducting the withheld amount of Rs.5,22,538/-, third respondent directed the petitioner to an amount of Rs.20,27,645/-.

Now the grievance of the petitioner is that as per Clause 12.1(ii) (a) General Commercial Contract of tender document, the price once fixed will remain valid for the entire period of delivery and further increase or decrease in taxes and other statutory duties will not affect during this period and that the reduction in the customs duty applies only to excise duty, sales tax, etc., where the levies are directly charged and recovered from the purchaser. In that view of the matter, as the petitioner has not charged any such duty on the consignee, it is not liable to refund the amount paid to it, but on the other hand, the third respondent has to pay the withheld amount of Rs.5,22,538/- to it. Hence, this writ petition.

A detailed counter is filed on behalf of the respondents stating

that as per clause 12.1(i)(b) of the General Commercial Contract of tender document, in case of revision of statutory levies/taxes during the supply period, the purchaser reserves the right to ask for reduction in the prices. Therefore, the DoT, in consultation with the Ministry of Finance, arrived at the conclusion that if imported cables become cheap as a result of reduction in customs duties, the prices of indigenous manufactured cables shall also come down. Accordingly, the impugned proceedings were issued directing the petitioner to pay the excess amount paid to it.

Having heard both the counsel this Court is of the view that the lis between the parties cannot be decided by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. As per Clause 20(1) and Section III of General Commercial Contract of tender document, in the event of any question, dispute or difference arising under the agreement or in connection therewith except as to matter the decision of which is specifically provided under the agreement, the same shall be referred to sole arbitration of the Director General, Department of Telecommunications or in case his designation is changed or his office is abolished, then in such case, to the sole arbitration of the officer for the time being entrusted whether in addition to the functions of the Director General, Department of Telecommunications or by whatever designation such officers may be called, and if the Director General or the said officer is unable or unwilling to act as such to the sole arbitration or some other person appointed by the Director General of the said officer. However, during the course of arguments it is brought to the notice of this Court by the learned standing counsel appearing for the respondents that the commercial functions of DoT which remained even after constitution of R2-MTNL, have since vested in BSNL and there is no Director General of DoT as of now.

In the light of the said stand taken by the learned standing

counsel, this Court is of the view that the designated arbitrator cannot be identified in view of the structural change and hence, it is appropriate for this Court to appoint a retired Judge of this Court as the sole arbitrator.

Accordingly, Sri Justice A.Gopal Rao, a retired Judge of this Court, is appointed as the Arbitrator to consider and arbitrate upon all the disputes arising between the parties herein in relation to letter No.203-9/96-MMs, dated 30.09.1997, of the first respondent and letter Nos.CP/82-63/96-97/1/34 dated 20.07.1998 and CP/82-63/97-98/42, dated 12.03.1999 of the third respondent.

With the above observation, the writ petition is disposed of. However, it is made clear that as there was an interim direction to the respondents not to recover the alleged excess amount from the petitioner during the pendency of the writ petition, the same shall be continued during the pendency of the arbitration. There shall be no order as to costs.

13.06.2007

sh